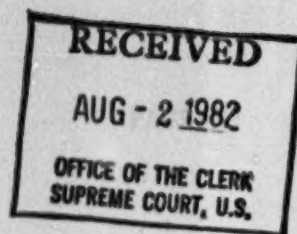


IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1981  
Case No. 82-5020



AUBREY DENNIS ADAMS, JR.

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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RESPONSE TO THE PETITIONER'S PETITION  
FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF FLORIDA IN THE UNITED STATES  
SUPREME COURT

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PRELIMINARY STATEMENT

Any record references shall be to Petitioner's Petition, labeled by the appropriate letter of his appendix, followed by the appropriate page number.

OPINION BELOW

Petitioner seeks review by this Court of his death sentence, imposed by the trial court, and reviewed by the Florida Supreme Court in Adams v. State, 412 So.2d 850 (Fla. 1982).

JURISDICTION

Petitioner improvidently seeks to invoke this Court's jurisdiction pursuant to Title 28, U.S.C., Section 1257(3). The issues raised by Petitioner should not be reviewed by this Court. Review by writ of certiorari is a matter of sound judicial discretion, and will be granted only where there are special and important reasons therefor. Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974).



### QUESTION PRESENTED

WHETHER THE FLORIDA SUPREME COURT, IN AFFIRMING PETITIONER'S DEATH SENTENCE, APPLIED AN UNCONSTITUTIONALLY BROAD AND VAGUE CONSTRUCTION OF THE PROVISION OF ITS DEATH PENALTY STATUTE ESTABLISHING AN AGGRAVATING CIRCUMSTANCE THAT THE CRIME WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST.

### STATEMENT OF THE CASE AND FACTS

Petitioner's Statement of the Case and Facts is accepted.

### REASONS FOR NOT GRANTING THIS WRIT

Petitioner's launches an assault on the approval of his death sentence by the Florida Supreme Court arguing that it broadly and unconstitutionally vaguely interpreted a provision of Florida's death penalty statute by finding that although the evidence was sufficient to show that he attempted to conceal the body after he murdered the victim, the evidence was insufficient to show that he murdered the victim for the purpose of avoiding arrest.

Petitioner argues that although the evidence shows that he knew the victim prior to her death, that he premeditatively murdered and sexually battered her, that the victim's neck and hands were bound, and that he attempted to conceal the body in order to avoid arrest, the evidence was still insufficient from which the Florida Supreme Court could conclude that he murdered the victim in order to avoid arrest. In effect, Petitioner is arguing that unless there is direct evidence in the record to indicate why he committed the act that he did, there is no way that the Florida Supreme Court could have lawfully approved the trial court's finding beyond and to the exclusion of every reasonable doubt that Petitioner killed the victim for the purpose of avoiding lawful arrest.

Under Florida law, intent is a state of mind and must be inferred from the circumstances. Williams v. State, 239 So.2d 127, 130 (Fla. 4th DCA 1970) and Edwards v. State, 213 So.2d 274 (Fla. 3d DCA 1968). Intent is not subject to direct proof and can only be

inferred from the circumstances. Scott v. State, 137 So.2d 625 (Fla. 2d DCA 1962). In determining Petitioner's intent in committing the crimes that he committed, the trial court, as well as the Florida Supreme Court, considered his conduct before, during, and after the crime, along with other relevant circumstances, in accord with Florida law. Cooper v. Wainwright, 308 So.2d 182, 185 (Fla. 4th DCA 1975) and Larry v. State, 104 So.2d 352, 354 (Fla. 1958).

Petitioner's attack upon the State's argument of "what other motive could there have been?" (Petitioner's Petition at 7-8) is specious. The Florida Rule of Circumstantial Evidence, eagerly grasped upon and flaunted by defendants in other situations, is that all hypotheses should be consistent with guilt and inconsistent with innocence, although Florida has recently eliminated its jury instruction on circumstantial evidence, in an apparent move to conform the law of circumstantial evidence to this Court's requirements. See Holland v. United States, 348 U.S. 121, 139, 140, 75 S.Ct. 127, 99 L.Ed. 150, 166 (1954) and In the Matter of the Use by the Trial Courts of the Standard Jury Instructions in Criminal Cases, 1981 F.L.W. 305 (Fla. 1981).<sup>\*</sup> In Petitioner's case, the State eliminated all hypotheses consistent with any motive other than that of the elimination of the victim in order to avoid lawful arrest, particularly where, as here, Petitioner's hypothesis of innocence (mental infirmity unfathomable by logical minds) is unreasonable. The aggravating circumstance of which Petitioner complains was proven beyond and to the exclusion of every reasonable doubt. Moreover, as in Washington v. State, 362 So.2d 658 (Fla. 1978), cert. denied 441 U.S. 937, 99 S.Ct. 2063, 60 L.Ed.2d 666, Petitioner's position is unacceptable; the circumstances are only consistent with his motive in eliminating the witness in order to avoid lawful arrest. The only difference between Petitioner's case and, say, Vaught v. State, 410 So.2d 147 (Fla. 1982), where the victim was shot after

<sup>\*</sup> The Florida Supreme Court did not send this opinion to West for publication; consequently there is and will be no Southern Second cite available.



pulling off his assailant's mask and telling him that he knew who he was and where he lived is that although Petitioner knew who his victim was and where she lived he didn't bother to wear a mask. At any rate, the evidence was sufficient for the trial court to conclude and the Florida Supreme Court to approve the aggravating circumstance that Petitioner killed his victim in order to avoid lawful arrest. Contrary to Petitioner's assertion, the trial court's finding and the Florida Supreme Court's conclusion that the aggravating circumstance of which Petitioner complains is proper does not broadly, vaguely, or unconstitutionally expand or interpret that section of Florida's death statute.

#### CONCLUSION

Wherefore, based on the foregoing arguments and authorities, Petitioner's Petition for writ of certiorari to the Supreme Court of Florida should be summarily denied.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Mr. Steven L. Bolotin, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302 by Hand Delivery this 28th day of July, 1982.

David P. Gaudin  
DAVID P. GAULDIN